

**OPEN SOLICITATION PLAN
FOR RECREATION OFFICIATING SERVICES (NON-RFP)**

1. The Department of Recreation will disseminate information about the respective programs and requirements for officiating services in program bulletins and notices. Such notices will be displayed and made available at the Department's central offices, each indoor recreational facility, and mailed to County residents. Notices will also be on the Office of Procurement's Web site and conspicuously displayed within the lobby of the Office of Procurement. Applications can be obtained from the Department of Recreation and from the Department of Recreation's web site.
2. The insurance requirements for this open solicitation are listed in provision 21 (Table A) of the General Conditions of Contract Between County and Contractor. The Division of Risk Management of the Department of Finance, reserves the right to revise the insurance requirements based on services provided.
3. We have established an application process for potential contractors to follow in order to obtain a contract under this open solicitation process (see Exhibit A).
4. The Department of Recreation offers sports officiating for various sport activities including football, volleyball, soccer and basketball for youth, teens, adults, and individuals with disabilities. All courses must be consistent with the Department's Mission, and the Department of Recreation has the final approval of any course to be offered.
5. The objective qualifications for potential contractors are listed in the application process.
6. The applicant must complete the application, and submit any mandatory submissions. Our Department will investigate to determine if the applicant is responsible. If the investigation reveals that an applicant is non-responsible, we will notify the Office of Procurement. At the discretion of the Department, interviews may be held with the applicant to assist the Department in the determination of the applicant's qualifications and the determination of responsibility. If the applicant meets the qualifications and we consider them to be responsible, then we will prepare a contract that the Office of the County Attorney has pre-approved (Exhibit B). If the applicant does not meet the qualifications, we will send them a written notification advising them as such.
7. Prior to the preparation of the contract, we will attempt to negotiate the fees and any other costs for a fair and reasonable price for the services to be provided under the contract.

8. We will obtain the necessary Certificate(s) of Insurance from the potential contractor, and submit to the Division of Risk Management for approval.
9. This Department will submit the following to the Office of Procurement: 1) a transmittal memo advising that the applicant is responsible, that the proposed fees are fair and reasonable, and that funds will be available under the Recreation Activity Agency Fund Account for any services to be rendered; 2) three copies of the contract which have been signed by the Department Head and the Contractor; 3) the approved Certificate(s) of Insurance by the Division of Risk Management; 4) a completed Wage Requirements Certification form; and, 5) a requisition for WAR reporting in the amount of the anticipated adjusted class income. If the applicant does not have a Vendor Identification Number in ADPICS, we will complete an ADPICS/FAMIS Vendor Table Maintenance form and submit it to the Office of Procurement prior to contract submittal.
10. It is understood that although a contract is being executed as an indication that the Contractor meets the qualifications established for their service, it is no guarantee that the Contractor will be assigned any services under the contract. Services will be mutually agreed upon based on need and the fees listed in the contract.
11. If the total costs, of the services under the contract, are expected to exceed \$50,000, the Office of Procurement must obtain a completed Minority, Female, Disabled Person Subcontractor Performance Plan from the applicant prior to execution of the contract.
12. The services provided under this open solicitation will be provided on an "as needed basis", therefore, funds will be available under the Recreation Activity Agency Fund Account for any services to be rendered. Services will be assigned to the contractor offering the lowest per game fee with the capability of providing the necessary number of officials needed for the services to be provided.
13. The contract term of these contracts will be up to three years. It is the County's intent that all contracts awarded under this Open Solicitation expire on the same date. The reason for the three year contract is to provide consistency within the classes and workshops offered to participants. The Department of Recreation will establish the contract term for each group of applicants.

EXHIBIT A

APPLICATION PROCESS

To all prospective applicants:

Thank you for your interest in submitting an application for Recreation Officiating Services under Open Solicitation #8725101002 with the Montgomery County Department of Recreation.

The Department of Recreation offers sports officiating for various sport activities including: football, volleyball, soccer, basketball for youth, teens, adults, and individuals with disabilities. All courses must be consistent with the Department's Mission, and the Department of Recreation has the final approval of any course to be offered.

Applicants may download a copy of the Recreation Officiating Application Information Sheet (Attachment A) and other attachments from the Department of Recreation web page: www.montgomerycountymd.gov/rec.

Applicants must submit a completed Recreation Officiating Application Information Sheet (Attachment A). They may also be required to submit a professional resume. This solicitation and each resulting contract is subject to the Wage Requirements Law, and therefore, each applicant must submit the appropriate Wage Requirements forms in Attachment E.

Each applicant is also requested to complete and submit the Minority Business Program & Offeror's Representation form (Attachment B) with its Recreation Officiating Application Information Sheet.

The qualifications for the Recreation Officials are listed on page 4. The Department of Recreation will review your application for completeness and to determine if you/your firm meet these qualifications. At the discretion of the Department of Recreation, interviews may be held with an applicant to assist the Department in the determination of the applicant's qualifications and the determination of responsibility. Those applications which are incomplete will be returned to the applicants. Those applicants that are found not qualified will be notified by the Department of Recreation.

If you/your firm are/is determined to be qualified and are/is considered to be a responsible applicant, you will be sent four copies of the contract for signature.

Prior to the preparation of the contract, the Department of Recreation will negotiate the fees and any other costs for a fair and reasonable price for the services to be provided under the contract.

The County will incorporate the General Conditions of Contract Between County & Contractor (Attachment C) into the contract.

The following documents must be completed and submitted prior to execution of the contract, and will be incorporated into the contract:

- 1) Wage Requirements for Services Addendum to the General Conditions of Contract Between County and Contractor; and its companion documents entitled "Wage Requirements Certification" and "501(c)(3) Nonprofit Organization's Employee's Wage and Health Insurance Form" (Attachment E)
- 2) Minority-Owned Business Addendum to General Conditions of Contract Between County and Contractor, and its companion document entitled Minority, Female, Disabled Person Subcontractor Performance Plan **(if applicable)** (Attachment D)

To review these documents, you may go to the Office of Procurement's website at <http://www.montgomerycountymd.gov/content/procurement/forms.asp>.

You may also be required to submit a Certificate(s) of Insurance in accordance with the insurance requirements listed in provision 21 (Table A) of the General Conditions of Contract Between County and Contractor. The Division of Risk Management of the Department of Finance, reserves the right to revise the insurance requirements based on services provided.

The following provisions are applicable to this solicitation, and any contract awarded as a result of this solicitation:

1. MINORITY, FEMALE, DISABLED PERSON PROGRAM COMPLIANCE

Under County law this solicitation is subject to the Montgomery County Code and the Montgomery County Procurement Regulations regarding participation in the Minority-Female-Disabled Person (MFD) procurement program. Further information regarding the County's MFD program is contained within this solicitation (see the provision entitled "Minority-Owned Business Addendum to the General Conditions of Contract between County and Contractor" and its companion document entitled "Minority, Female, Disabled Person Subcontractor Performance Plan").

2. MONTGOMERY COUNTY PROCUREMENT REGULATIONS

The Montgomery County Procurement Regulations are applicable to this solicitation and any contracts awarded pursuant to this solicitation.

3. PROPRIETARY & CONFIDENTIAL INFORMATION

This is to notify prospective applicants that the County has unlimited data rights regarding applications submitted in response to its solicitations. Unlimited data rights means that Montgomery County has the right to use, disclose, reproduce, prepare derivative works, distribute copies to the public, or perform publicly and display publicly any information submitted by applicants in response to this or any solicitation issued by the County. However, information that is deemed to be confidential commercial or financial information as defined by the Maryland Information Act, State Government Article §10-617, will be exempted from disclosure if the submitter can show that release of such information would cause substantial competitive harm to the submitter.

It is the responsibility of the applicant to clearly identify each part of his/her application that it believes is confidential commercial or financial information by stamping the bottom right hand corner of each pertinent page with one inch bold face letters stating the words "confidential" or "proprietary". The applicant agrees with regard to any portion of the application that is not stamped as proprietary or confidential that it believes, and expressly permits the County to deem it not to be proprietary or confidential.

4. NAME AND SIGNATURE REQUIREMENTS FOR APPLICATIONS AND CONTRACTS

The correct and full legal business name of the entity involved must be used on applications received and on contract(s) issued as a result of this solicitation. A trade name, i.e., a shortened or different name under which the firm does business, must not be used when the full legal name is different. Corporations must have names that comply with State law, which requires a suffix indicating the corporate status of that business (e.g., Inc., Incorporated, etc.). Trade names may be indicated by individuals or corporations with the individual or corporate name followed by "t/a" (trading as) or "d/b/a" (doing business as), respectively.

The signature on the application, contract, amendment, or related correspondence must conform to the following:

All signatures must be made by an authorized officer, partner, manager, member, or employee. The signing of an application or a contract is a representation by the person signing that the person signing is authorized to do so on behalf of the offeror or contractor.

No application will be accepted unless submitted in ink or typewritten.

After execution of the contract, the Office of Procurement will forward two copies of the contract to the Department of Recreation, who will send a copy to the Contractor. A Notice to Proceed will only be sent to the Contractor from the Department of Recreation when services are scheduled.

It is understood that although a contract is being executed as an indication that the Contractor meets the qualifications established for their service, it is no guarantee that the Contractor will be assigned any services under the contract. Services will be mutually agreed upon based on need and the fees listed in the contract.

Should you have any questions regarding the application process, please contact the Sports Team at (240) 777-6961. Thank you for your interest in providing recreation officiating services for the Montgomery County Department of Recreation.

OFFICIAL QUALIFICATIONS

"Applicants must: 1) be at least 21 years old; 2) possess a bachelor's degree or appropriate certification in the anticipated field of instruction; and 3) have at least five (5) years of experience in the applicable field. An equivalent combination of education and experience may be substituted. Teaching experience is highly desirable. The experience will be determined by a review of the application and interview, if held. The course being offered must be consistent with the Department's mission."

EXHIBIT B

CONTRACT # CONTRACT FOR RECREATION OFFICIATING SERVICES

This Contract is between Montgomery County, Maryland (the County) and _____ (the "Contractor").

Article 1 - SCOPE OF WORK

A. The Contractor must provide the following officiating services: _____

1. **RULES** - The Contractor must 1) assign up to _____ official(s) per game, according to league rules published by the County; 2) make all decisions of play during the game impartially; and 3) sign the official scorecards following each game officiated.
2. **GAMES** - The Contractor must provide officials for scheduled games. All leagues are scheduled for multiple games. The County reserves the right to schedule single games due to make-ups, rescheduling, forfeiture, officials' failure to show up, or for any other reason in the County's discretion. The Contractor must provide officials for all rescheduled games about which the Assignment Commissioner receives oral notice 24 hours before game time.

The County will furnish the Contractor printed schedules including leagues, names of teams, locations of playing sites, dates and hours, at least ten days before the first game on the schedule, and is responsible for notifying the Assignment Commissioner by oral communication of any schedule changes.

3. **DATES** - League games are generally played on _____. Games must begin at _____. Officials must arrive at a game site at least 15 minutes before the starting time of the scheduled game to check the safety and condition of the playing facility. Make-up games are generally scheduled on game days, but occasionally games may be made up on other days. Make-up days will be scheduled as needed to complete the playing season. Make-up or playoff dates may extend beyond the initial season conclusion date provided on the schedule.
4. **REPORTS** - The Contractor must provide written reports of games or responses to complaints, protests, ejections, suspensions or other inquiries, when requested by the County. The Contractor must provide a response within seven working days from receipt of the County's inquiry. The Contractor must notify the County within 24 hours of any game canceled.
5. **ASSIGNMENT COMMISSIONER** - The Contractor must designate an Assignment Commissioner. The Assignment Commissioner must obtain the league schedules, and the County will provide him/her with notifications of cancellations or rescheduled games. The Assignment Commissioner must assign officials to all scheduled and rescheduled games. The Assignment Commissioner must have an answering service or a message recorder to receive revised schedules and cancellations.
6. **CANCELLATION FEES** - If the County notifies the Assignment Commissioner of a canceled game less than 24 hours before the scheduled game, the Contractor will be entitled to the cancellation fee specified in Attachment B, if any, but in no event more than a one-game fee for each official assigned to a canceled game location.
7. **OTHER** - The Contractor must have sufficient officials to cover the number of games scheduled. Leagues require up to _____ official(s) per game. Each location may have as many as _____ game(s) per day. As many as _____ location(s) may be scheduled concurrently on any playing day.

Harassment or abuse of an official by a team, player, or spectator may result in disciplinary action by the County. The official must document the incident. The Contractor, after notice to and approval by the County, may refuse to officiate a subsequent game involving that team, player, or other person.

The Contractor must provide officials who are appropriately attired and equipped for each game.

The Contractor must provide all supplies and equipment, except those supplies and equipment that the County agrees in writing to provide to the Contractor.

It is understood that although this contract is being executed as an indication that the Contractor meets the qualifications established for this service, it is no guarantee that the Contractor will be assigned any games under the contract. The County reserves the right to assign games based upon location, anticipated need of the games, and the per game fee.

Article 2- INSURANCE

The Contractor must at all times maintain insurance, as specified in the attached Mandatory Insurance Requirements (Attachment C), which are incorporated into and made a part of this Contract, supersede the insurance requirements contained in Provision 21 of the General Conditions.

Article 3- COMPENSATION

A. The County will pay fees to the Contractor as specified in Attachment A, subject to the following:

1. The County must pay the Contractor's compensation from the fees collected from the participants of the activity for which the Contractor is engaged. The County's liability to pay this compensation is limited to the amount paid to the County by the participants.
2. The Contractor must submit invoices to the Contract Administrator within 10 days after the end of each month for goods and/or services provided during that month. Invoices must be in a form acceptable to the County.
3. Payments that the Contractor is entitled to receive under this Contract are limited to the funds collected from participant fees.
4. The County will pay the fee specified in Attachment A for a forfeited game, or a game that is terminated early, unless there is no official present, the game was canceled with at least 24 hours notice, or a blanket cancellation (due to weather or other conditions) was duly announced. No fee will be due until a game protest is resolved.

B. Annual Price Adjustment: Prices quoted are firm for a period of one year after execution of the contract. Any requests for price adjustment, after this one year period, is subject to the following:

1. Approval or rejection by the Director, Office of Procurement or designee.
2. Must be submitted in writing to the Director, Office of Procurement and accompanied by supporting documentation justifying the Contractor's request. A request for any price adjustment may not be approved unless the contractor submits to the County sufficient justification to support that the Contractor's request is based on its net increase in costs in delivering the goods/service to the County under the contract terms.
3. Must be submitted sixty (60) days prior to the contract anniversary date.
4. May not be approved in an amount that exceeds the annual percentage change of the Consumer Price Index (CPI) for the twelve month period immediately prior to the date of the request. The request must not exceed the CPI for all urban consumers issued for the Washington-Baltimore, DC-MD-VA-WV Metropolitan area by the United States Department of Labor, Bureau of Labor Statistics for ALL ITEMS.
5. The County will approve only one price adjustment for each contract year, if a price adjustment is approved.
6. Should be effective sixty (60) days from the date of receipt of the contractor's request.

Must be executed by written contract amendment.

Article 4- CONTRACT ADMINISTRATOR

The Contract Administrator for this Contract is:

Terry Blount-Williams, 4010 Randolph Road, Silver Spring, MD 20902 at (240) 777-6962.

Article 5-TERM

The term of this Contract begins on _____, 200__ and ends on _____, 20___. This Contract becomes effective when signed by the Director, Office of Procurement.

Article 6- INTELLECTUAL PROPERTY INDEMNIFICATION

The Contractor must defend and indemnify the County from any claim made, or on any suit or proceeding brought, against the County based on infringement of copyright, trade name or trademark or other intellectual property or privacy right of a similar nature. This is in addition to the requirements of the indemnification provision in the General Conditions of Contract Between County and Contractor ("General Conditions of Contract").

Article 7 - TERMINATION/DAMAGES

- A. Liquidated Damages: If the Contractor's officials are 1/2 hour or more tardy, or fail to appear for a game, the County may impose against the Contractor liquidated damages in the amount of \$ _____ for the first _____ game(s), and \$ _____ for each subsequent game during a season (including tournament and post-season play). The Contractor agrees that the County is damaged by any tardiness or failure of Contractor's officials to appear, and that the amount of damages is difficult to determine. The parties agree that this liquidated damage provision is fair and reasonable, and is intended to compensate the County only for the disruption of the County's program caused by tardy or missing officials, and is not intended to compensate the County for the cost of obtaining substitute performance, or as a penalty.
- B. In addition to the County's right to impose liquidated damages, the County may totally or partially terminate this Contract for one or more games without first providing the contractor with the opportunity to cure the default for any Contractor default, including the failure to provide the required number of officials for a game. In the event of a partial termination for cause under this section, the County may charge the Contractor 1) the administrative cost of reprocurring the officiating service; and 2) the difference between the Contract price for the officiating service and the price of the substitute performance.
- C. These remedies supplement the remedies in the General Conditions of Contract.

Article 8 - NO SOLICITATION

While performing services under this Contract, the Contractor and its employees, agents and independent contractors must not solicit participants or participate in any activity that may create the appearance of favoritism for one team or individual.

Article 9- GENERAL CONDITIONS

- A. The attached General Conditions of Contract Between County and Contractor (Attachment C) are incorporated by reference into, and made a part of, this Contract.

Article 10 – PRIORITY OF DOCUMENTS

The following documents are incorporated by reference into and made a part of this Contract and are listed in order of legal precedence below in the event of a conflict in their terms: 1) The terms contained in this Contract document, including: a) the General Conditions of Contract Between County and Contractor; b) Wage Requirements for Services Addendum to the General Conditions of Contract Between County and Contractor, and its companion documents entitled "Wage Requirements Certification" and "501(c)(3) Nonprofit Organization's Employee's Wage and Health Insurance Form"; and, c) Minority-Owned Business Addendum to the General Conditions of Contract Between County and Contractor, and its companion document entitled "Minority, Female, Disabled Person Subcontractor Performance Plan, if applicable; and 2) the Recreation Officiating Application Information Sheet.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

SIGNATURES

CONTRACTOR

By: _____
Authorized Signature

Date: _____

MONTGOMERY COUNTY, MARYLAND

By: _____
Director, Office of Procurement

Date: _____

RECOMMENDED

By: _____
Director, Department of Recreation

Date: _____

**THIS CONTRACT HAS BEEN PRE-
APPROVED AS TO FORM AND LEGALITY
BY OFFICE OF THE COUNTY ATTORNEY
AND MAY NOT BE MODIFIED**

ATTACHMENT A
MONTGOMERY COUNTY DEPARTMENT OF RECREATION

RECREATION OFFICIATING APPLICATION INFORMATION SHEET

Return to: **MONTGOMERY COUNTY DEPARTMENT OF RECREATION, Sports Team, 4010 Randolph Road, Silver Spring, MD 20902**

I am interested in officiating the following sports (s): _____ Basketball _____ Football _____ Soccer _____ Volleyball

Legal Name of Corporation: _____

Legal Name of Applicant: _____ S.S.#/Fed. I.D. Number: _____

Phone: Home (_____) _____ Business: (_____) _____ Fax: (_____) _____

Address (Home): _____
Street City State Zip Code

Address (Business): _____
Street City State Zip Code

Date of Birth: _____

A COMPLETE RESUME MAY BE ATTACHED IN LIEU OF COMPLETING THE FOLLOWING INFORMATION ON EDUCATION, SKILLS OR EXPERIENCE.

EDUCATION LICENSES OR SPECIAL TRAINING: LIST ALL RELEVANT:

INSTITUTION	CITY & STATE	FROM	TO	MAJOR	DEGREE/LICENSE

WORK EXPERIENCE: List all paid positions or experiences which relate to the sport you wish to officiate. Please attach separate sheet if necessary.

POSITION	EMPLOYER	ADDRESS	FROM	TO

VOLUNTEER WORK: List all relevant positions you have held on a volunteer or non-paid basis:

Please list relevant special skills, honors, awards, publications or other information which you feel would be helpful in judging your qualifications for officiating services. Attach supplemental sheet if needed.

REFERENCE: Please give the name of three persons to whom we may call regarding your qualifications and abilities as an official - preferably program supervisor or directors.

NAME	POSITION	AREA CODE	PHONE NUMBER	ADDRESS

Please check group(s) which you would prefer to official: ☐ High School Summer Varsity ☐ High School Summer JV ☐ Adult ☐ 9th to 12 Grade & Rising Star ☐ 6th, 7th & 8th Grades

Days and hours available for work: _____

Date available to start service: _____

This application and attachments are incorporated and made a part of any contract resulting from this solicitation.

Name and Title of Person Authorized to Sign Application (type or print)

Signature of Above Person

Date

Aquatics (240) 777-6860
Seniors & Therapeutics (240) 777-4925
Sports & Leagues (240) 777-6961
Teens (240) 777-6985

INFORMATION NUMBERS
Community Centers
East County (240) 777-4980
Mid County (240) 777-4930
Silver Spring (240) 777-4910
Upper County (240) 777-6940
Western County (240) 777-6900

Camps & Classes (240) 777-6870
Arts & Crafts, Boating Basics, Bridge, Cooking, Dance, Dog Obedience, Etiquette-Dining Skills, Exercise & Fitness, Instructional Sports Classes Martial Arts, Music, Tiny Tots, Wellness, etc.

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ATTACHMENT A-1

Basketball Officials Fee Schedule

The Contractor must have sufficient officials to cover the number of games scheduled according to league rules published by the County. Leagues require up to **two (2) officials** per game. Each location may have as many as **twelve (12) games per day at as many as sixty (60) locations scheduled concurrently** on any playing day. The fees are per official per game for High School Summer Varsity, High School Summer JV, Adult, 9th – 12th Grade & Rising Star, 6th & 7th & 8th Grade.

Two Officials per game per official fee \$_____

One Official All Games \$_____

Forfeited Game/Game Terminated Early Fee \$_____

Cancellation Fee \$_____

ATTACHMENT A-2

Football Officials Fee Schedule

The Contractor must have sufficient officials to cover the number of games scheduled, according to WSFOA rules, 2-Hand Touch Football. Leagues require up to **three (3) officials** per game. Each location may have as many as **eight (8) games** per day at as many as **twelve (12) locations** concurrently.

Fee per official, per game \$_____

Forfeited Game/Game Terminated Early Fee \$_____

Cancellation Fee \$_____

ATTACHMENT A-3

Soccer Officials Fee Schedule

The Contractor must have sufficient officials to cover the number of games scheduled according to league rules published by the County. Leagues require up to **three (3) officials** per game. Each location may have as many as **six (6) games per day at as many as seventeen (17) locations** scheduled concurrently on a playing day.

	45 Minute Halves			40 Minute Halves	
	1 referee	2 referees	3 referees	1 referee	2 referees
	(Per referee fee)			(Per referee fee)	
Single Game	\$_____	\$_____	\$_____	\$_____	\$_____
Two or more Games	\$_____	\$_____	\$_____	\$_____	\$_____
Forfeited Game/Game Terminated Early Fee			\$_____		
Cancellation Fee			\$_____		

ATTACHMENT A-4

Volleyball Officials Fee Schedule

The Contractor must have sufficient officials to cover the number of games scheduled according to league rules published by the County. Leagues require up to **two (2) officials** per game. Each location may have as many as **four (4) games** per day at as many as **six (6) locations** scheduled concurrently on any playing day.

Fee per official, per match \$_____

Forfeited Game/Game Terminated Early Fee \$_____

Cancellation Fee \$_____

ATTACHMENT B

MINORITY BUSINESS PROGRAM & OFFEROR'S REPRESENTATION

It is the policy of the County to recruit actively minority-owned businesses to provide goods and services to perform governmental functions pursuant to Section 11B-57 of the County Code. Minority-owned businesses are described in County law as Minority/Female/Disabled Person owned businesses (MFD). MFD businesses include certain non-profit entities organized to promote the interests of persons with a disability demonstrating (on a contract by contract basis) that at least 51% of the persons used by the non-profit entity to perform the services or manufacture the goods contracted for by the County, are persons with a disability. MFD firms also include those firms that are 51% owned, controlled and managed by one or more members of a socially or economically disadvantaged minority group, which include African Americans who are not of Hispanic origin, Hispanic Americans, Native Americans, Asian Americans, Women and Mentally or Physically Disabled Persons.

Section 7 – "Minority Contracting," Montgomery County Procurement Regulations specifies the procedure to be followed and will govern the evaluation of offers received pursuant to this solicitation. A copy of Section 7 of the Procurement Regulations is available upon request.

Prior to awarding contracts with a value of \$50,000 or more, a prospective Contractor (who is not a certified MFD firm) must demonstrate that a minimum percentage of the overall contract value as set by the County, will be subcontracted to certified MFD businesses. A decision as to whether the prospective Contractor has demonstrated a good faith effort to meet this subcontracting requirement will be made by the Director, Office of Procurement or his/her designee, who may waive this requirement.

A sample MFD Report of Payments Received form is attached. This form is mailed to the MFD Subcontractor to complete for documentation of payment by the Prime Contractor. It is not to be completed by the Prime Contractor nor submitted with the MFD Subcontractor Performance Plan.

The Director, Office of Procurement, or his /her designee determines whether a waiver of MFD subcontracting would be appropriate, under Section 7.3.3.5 of the Procurement Regulations.

For further information regarding the MFD Business Program, please contact the Minority Procurement Office at (240) 777-9912.

Offerors are encouraged (but not required) to complete the following:

I hereby represent that is firm (CIRCLE ONE) IS or IS NOT

a Minority Business firm as indicated below (CIRCLE ONE):

AFRICAN AMERICAN

HISPANIC AMERICAN

NATIVE AMERICAN

ASIAN AMERICAN

FEMALE

DISABLED PERSON

**Indicate Maryland Department of Transportation (MDOT) or SBA 8(a) Certification # _____
(Attach your MDOT or SBA 8(a) certification documents)**

PMMD-90 Rev. 07/06



Montgomery County
For Office Use
Office of Procurement
Office of the Director

MFD Report of Payments Received

SAMPLE ONLY! NOT TO BE USED BY PRIME

MFD Subcontractor Company Name: _____

Prime Contractor Company Name: _____

Contract Number/Title: _____

Project Location: _____

MFD Subcontract Amount: \$: _____

PLEASE READ CAREFULLY BEFORE SIGNING

This certifies that for the month of _____, my company received \$ _____
for work performed, services rendered and/or materials supplied on the above contract.

TOTAL AMOUNT OF SUBMITTED INVOICES TO DATE: \$ _____

TOTAL PAYMENTS RECEIVED TO DATE: \$ _____

Are you experiencing any contract problems with the prime contractor and/or the project? Yes_____ No_____

Comments: _____

I certify that the above information is true and accurate to the best of my record documentation and knowledge.

(TYPED/PRINTED COMPANY NAME)

(TYPED/PRINTED NAME OF COMPANY OFFICIAL)

(TITLE)

(SIGNATURE OF COMPANY OFFICIAL)

(DATE)

TELEPHONE

FAX

E-MAIL

Mail to: Alvin Boss, Program Specialist
255 Rockville Pike, Suite 180
Rockville, MD 20850

ATTACHMENT C
GENERAL CONDITIONS OF CONTRACT BETWEEN COUNTY & CONTRACTOR

1. ACCOUNTING SYSTEM AND AUDIT, ACCURATE INFORMATION

The contractor certifies that all information the contractor has provided or will provide to the County is true and correct and can be relied upon by the County in awarding, modifying, making payments, or taking any other action with respect to this contract including resolving claims and disputes. Any false or misleading information is a ground for the County to terminate this contract for cause and to pursue any other appropriate remedy. The contractor certifies that the contractor's accounting system conforms with generally accepted accounting principles, is sufficient to comply with the contract's budgetary and financial obligations, and is sufficient to produce reliable financial information.

The County may examine the contractor's and any first-tier subcontractor's records to determine and verify compliance with the contract and to resolve or decide any claim or dispute arising under this contract. The contractor and any first-tier subcontractor must grant the County access to these records at all reasonable times during the contract term and for 3 years after final payment. If the contract is supported to any extent with federal or state funds, the appropriate federal or state authorities may also examine these records. The contractor must include the preceding language of this paragraph in all first-tier subcontracts.

2. AMERICANS WITH DISABILITIES ACT

The contractor agrees to comply with the nondiscrimination requirements of Titles II and III, and other provisions, of the Americans with Disabilities Act of 1990, Pub. Law 101-336, as amended, currently found at 42 U.S.C., § 12101, et seq.

3. APPLICABLE LAWS

This contract must be construed in accordance with the laws and regulations of Maryland and Montgomery County. The Montgomery County Procurement Regulations are incorporated by reference into, and made a part of, this contract. In the case of any inconsistency between this contract and the Procurement Regulations, the Procurement Regulations govern. The contractor must, without additional cost to the County, pay any necessary fees and charges, obtain any necessary licenses and permits, and comply with applicable federal, state and local laws, codes and regulations. For purposes of litigation involving this contract, except for contract Disputes discussed in paragraph 8 below, exclusive venue and jurisdiction must be in the Circuit Court for Montgomery County, Maryland or in the District Court of Maryland for Montgomery County.

Furthermore, by signing, or performing work under, a contract for services or arising from a grant award to participate in a County-funded program, contractor expressly certifies and agrees that it will not expend County funds to assist, promote, deter, or otherwise influence union activity or organizing, and that it will comply with the requirements of Montgomery County Code, Section 11B-33B.

4. ASSIGNMENTS AND SUBCONTRACTS

The contractor may not assign or transfer this contract, any interest herein or any claim hereunder, except as expressly authorized in writing by the Director, Office of Procurement. Unless performance is separately and expressly waived in writing by THE DIRECTOR, OFFICE OF PROCUREMENT, an assignment does not release the contractor from responsibility for performance of this contract. Unless otherwise provided in the contract, the contractor may not contract with any other party for furnishing any of the materials or services herein contracted for without the written approval of the Director, Office of Procurement.

5. CHANGES

The Director, Office of Procurement, may unilaterally change the work, materials and services to be performed. The change must be in writing and within the general scope of the contract. The contract will be modified to reflect any time or money adjustment the contractor is entitled to receive. Contractor must bring to the Contract Administrator, in writing, any claim about an adjustment in time or money resulting from a change, within 30 days from the date the Director, Office of Procurement, issued the change in work, or the claim is waived. Any failure to agree upon a time or money adjustment must be resolved under the "Disputes" clause of this contract. The contractor must proceed with the prosecution of the work as changed, even if there is an unresolved claim. No charge for any extra work, time or material will be allowed, except as provided in this section.

6. CONTRACT ADMINISTRATION

A. The contract administrator, subject to paragraph B below, is the Department representative designated by the Director, Office of Procurement, in writing and is authorized to:

- (1) serve as liaison between the County and Contractor;
- (2) give direction to the Contractor to ensure satisfactory and complete performance;
- (3) monitor and inspect the Contractor's performance to ensure acceptable timeliness and quality;
- (4) serve as records custodian for this contract, including wage requirements;
- (5) accept or reject the Contractor's performance;
- (6) furnish timely written notice of the contractor's performance failures to the Director, Office of Procurement and to the County Attorney, as appropriate;
- (7) prepare required reports;
- (8) approve or reject invoices for payment;
- (9) recommend contract modifications or terminations to the Director, Office of Procurement;
- (10) issue notices to proceed; and
- (11) monitor and verify compliance with any MFD Performance Plan.

B. The contract administrator is NOT authorized to make determinations (as opposed to recommendations) that alter, modify, terminate or cancel the contract, interpret ambiguities in contract language, or waive the County's contractual rights.

7. COST & PRICING DATA

Chapter 11B of the County Code and the Montgomery County Procurement Regulations require that cost & pricing data be obtained from proposed awardees/contractors in certain situations. The contractor guarantees that any cost & pricing data provided to the County will be accurate and complete. The contractor grants the Director, Office of Procurement, access to all books, records, documents, and other supporting data in order to permit adequate evaluation of the contractor's proposed price(s). The contractor also agrees that the price to the County, including profit or fee, may, at the option of the County, be reduced to the extent that the price was based on inaccurate, incomplete, or noncurrent data supplied by the contractor.

8. DISPUTES

Any dispute by Contractor arising under this contract that is not disposed of by agreement must be decided under the Montgomery County Code and the Montgomery County Procurement Regulations. Pending final resolution of a dispute, the Contractor must proceed diligently with contract performance. Subject to subsequent revocation or alteration by the Director, Office of Procurement, the head of the County department, office or agency ("Department Head") of the contract administrator is the designee of the Director, Office of Procurement, for the purpose of dispute resolution. The Department Head, or his/her designee, must forward to the Director, Office of Procurement, a copy of any written resolution of a dispute. The Department Head may, with the contractor's consent, delegate this responsibility to another person (other than the contract administrator). A contractor must notify, in writing, the contract administrator of a claim, and must attempt to resolve a claim with the contract administrator prior to filing a dispute with the Director, Office of Procurement. The contractor waives any dispute or claim not made in writing and received by the Director, Office of Procurement, within 30 days of the event giving rise to the dispute or claim, whether or not the contract administrator has responded to a written notice of claim or resolved the claim. The Director, Office of Procurement, must dismiss a dispute that is not timely filed. A dispute must be in writing, for specific relief, and any requested relief must be fully supported by affidavit of all relevant calculations, including cost and pricing information, records, and other information. At the County's option, the Contractor agrees to be made a party to any related dispute involving another contractor.

9. DOCUMENTS, MATERIALS AND DATA

All documents, materials or data developed as a result of this contract are the County's property. The County has the right to use and reproduce any documents, materials, and data, including confidential information, used in the performance of, or developed as a result of, this contract. The County may use this information for its own purposes, including reporting to state and federal agencies. The contractor warrants that it has title to or right of use of all documents, materials or data used or developed in connection with this contract. The Contractor must keep confidential all documents, materials, and data prepared or developed by the contractor or supplied by the County.

10. DURATION OF OBLIGATION

The contractor agrees that all of contractor's obligations and warranties, including all requirements imposed by the Minority Owned Business Addendum to these General Conditions, if any, which directly or indirectly are intended by their nature or by implication to survive contractor performance, do survive the completion of performance, termination for default, termination for convenience, or termination by mutual consent of the contract.

11. ENTIRE AGREEMENT

There are no promises, terms, conditions, or obligations other than those contained in this contract. This contract supersedes all communications, representations, or agreements, either verbal or written, between the parties hereto, with the exception of express warranties given to induce the County to enter into the contract.

12. ETHICS REQUIREMENTS/ POLITICAL CONTRIBUTIONS

The contractor must comply with the ethics provisions contained in Chapters 11B and 19A, Montgomery County Code, which include the following:

- (a) a prohibition against making or offering to make certain gifts. Section 11B-51(a).
- (b) a prohibition against kickbacks. Section 11B-51(b).
- (c) a prohibition against a person engaged in a procurement from employing or offering to employ a public employee. Section 11B-52 (a).
- (d) a prohibition against a contractor that is providing a recommendation to the County from assisting another party or seeking to obtain an economic benefit beyond payment under the contract. Section 11B-52 (b)
- (e) a restriction on the use of confidential information obtained in performing a contract. Section 11B-52 (c).
- (f) a prohibition against contingent fees. Section 11B-53.

Furthermore, the contractor specifically agrees to comply with County Code Sections 11B-51, 11B-52, 11B-53, 19A-12, and/or 19A-13 .

In addition, the contractor must comply with the political contribution reporting requirements currently codified under Title 14 of Article 33 of the Annotated Code of Maryland.

13. GUARANTEE

- A. Contractor guarantees for one year from acceptance, or for a longer period that is otherwise expressly stated in the County's written solicitation, all goods, services, and construction offered, including those used in the course of providing the goods, services, and/or construction. This includes a guarantee that all products offered (or used in the installation of those products) carry a guarantee against any and all defects for a minimum period of one year from acceptance, or for a longer period stated in the County's written solicitation. The contractor must correct any and all defects in material and/or workmanship that may appear during the guarantee period, or any defects that occur within one (1) year of acceptance even if discovered more than one (1) year after acceptance, by repairing, (or replacing with new items or new materials, if necessary) any such defect at no cost to the County and to the County's satisfaction.
- B. Should a manufacturer's or service provider's warranty or guarantee exceed the requirements stated above, that guarantee or warranty will be the primary one used in the case of defect. Copies of manufacturer's or service provider's warranties must be provided upon request.
- C. All warranties and guarantees must be in effect from the date of acceptance by the County of the goods, services, or construction.
- D. The contractor guarantees that all work shall be accomplished in a workmanlike manner, and the contractor must observe and comply with all Federal, State, County and local laws, ordinances and regulations in providing the goods, and performing the services or construction.
- E. Goods and materials provided under this contract must be of first quality, latest model and of current manufacture, and must not be of such age or so deteriorated as to impair their usefulness or safety. Items that are used, rebuilt, or demonstrator models are unacceptable, unless specifically requested by the County in the Specifications.

14. HAZARDOUS AND TOXIC SUBSTANCES

Manufacturers and distributors are required by federal "Hazard Communication" provisions (29 CFR 1910.1200), and the Maryland "Access to Information About Hazardous and Toxic Substances" Law, to label each hazardous material or chemical container, and to provide Material Safety Data Sheets to the purchaser. The contractor must comply with these laws and must provide the County with copies of all relevant documents, including Material Safety Data Sheets, prior to performance of work or contemporaneous with delivery of goods.

15. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA) COMPLIANCE

In addition to the provisions stated above in Section 3. "Applicable Laws," contractor must comply with all requirements in the federal Health Insurance Portability and Accountability Act (HIPAA), to the extent that HIPAA is applicable to this contract. Furthermore, contractor must enter into the County's standard Business Associate Agreement when contractor or the County, as part of this contract, may use or disclose to one another, to the individual whose health information is at issue, or to a third-party, any protected health information that is obtained from, provided to, made available to, or created by, or for, the contractor or the County.

16. IMMIGRATION REFORM AND CONTROL ACT

The contractor warrants that both the contractor and its subcontractors do not, and shall not, hire, recruit or refer for a fee, for employment under this contract or any subcontract, an alien while knowing the alien is an unauthorized alien, or any individual without complying with the requirements of the federal Immigration and Nationality laws, including any verification and record keeping requirements. The contractor further assures the County that, in accordance with those laws, it does not, and will not, discriminate against an individual with respect to hiring, recruitment, or referral for a fee, of an individual for employment or the discharge of an individual from employment, because of the individual's national origin or, in the case of a citizen or prospective citizen, because of the individual's citizenship status.

17. INCONSISTENT PROVISIONS

Notwithstanding any provisions to the contrary in any contract terms or conditions supplied by the contractor, this General Conditions of Contract document supersedes the contractor's terms and conditions, in the event of any inconsistency.

18. INDEMNIFICATION

The contractor is responsible for any loss, personal injury, death and any other damage (including incidental and consequential) that may be done or suffered by reason of the contractor's negligence or failure to perform any contractual obligations. The contractor must indemnify and save the County harmless from any loss, cost, damage and other expenses, including attorney's fees and litigation expenses, suffered or incurred due to the contractor's negligence or failure to perform any of its contractual obligations. If requested by the County, the contractor must defend the County in any action or suit brought against the County arising out of the contractor's negligence, errors, acts or omissions under this contract. The negligence of any agent, subcontractor or employee of the contractor is deemed to be the negligence of the contractor. For the purposes of this paragraph, County includes its boards, agencies, agents, officials and employees.

19. INDEPENDENT CONTRACTOR

The contractor is an independent contractor. The contractor and the contractor's employees or agents are not agents of the County.

20. INSPECTIONS

The County has the right to monitor, inspect and evaluate or test all supplies, goods, services, or construction called for by the contract at all reasonable places (including the contractor's place of business) and times (including the period of preparation or manufacture).

21. INSURANCE

Prior to contract execution by the County, the proposed awardee/contractor must obtain at its own cost and expense the insurance specified in the applicable table (See Tables A and B) or attachment to these General Conditions, with one or more insurance company(ies) licensed or qualified to do business in the State of Maryland, and acceptable to the County's Division of Risk Management. Contractor must keep this insurance in full force and effect during the term of this contract, including all extensions. Unless expressly provided otherwise, Table A is applicable to this contract. The insurance must be evidenced by one or more Certificate(s) of Insurance and, if requested by the County, the proposed awardee/contractor must provide a copy of any and all insurance policies to the County. At a minimum, the proposed awardee/contractor must submit to the Director, Office of Procurement, one or more Certificate(s) of Insurance prior to award of this contract, and prior to any contract modification extending the term of the contract, as evidence of compliance with this provision. The contractor's insurance must be primary. Montgomery County, MD, including its officials, employees, agents, boards, and agencies, must be named as an additional insured on all liability policies. Forty-five days written notice to the County of cancellation or material change in any of the policies is required. In no event may the insurance coverage be less than that shown on the applicable table, attachment, or contract provision for required insurance. The Director, Office of Procurement, may waive the requirements of this section, in whole or in part.

22. INTELLECTUAL PROPERTY APPROVAL AND INDEMNIFICATION - INFRINGEMENT

If contractor will be preparing, displaying, publicly performing, reproducing, or otherwise using, in any manner or form, any information, document, or material that is subject to a copyright, trademark, patent, or other property or privacy right, then contractor must: obtain all necessary licenses, authorizations, and approvals related to its use; include the County in any approval, authorization, or license related to its use; and indemnify and hold harmless the County related to contractor's alleged infringing or otherwise improper or unauthorized use. Accordingly, the contractor must protect, indemnify, and hold harmless the County from and against all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits, or actions, and attorneys' fees and the costs of the defense of the County, in any suit, including appeals, based upon or arising out of any allegation of infringement, violation, unauthorized use, or conversion of any patent, copyright, trademark or trade name, license, proprietary right, or other related property or privacy interest in connection with, or as a result of, this contract or the performance by the contractor of any of its activities or obligations under this contract.

23. NON-CONVICTION OF BRIBERY

The contractor hereby declares and affirms that, to its best knowledge, none of its officers, directors, or partners or employees directly involved in obtaining contracts has been convicted of bribery, attempted bribery, or conspiracy to bribe under any federal, state, or local law.

24. NON-DISCRIMINATION IN EMPLOYMENT

The contractor agrees to comply with the non-discrimination in employment policies and/ or provisions prohibiting unlawful employment practices in County contracts as required by Section 11B-33 and Section 27-19 of the Montgomery County Code, as well as all other applicable state and federal laws and regulations regarding employment discrimination.

The contractor assures the County that, in accordance with applicable law, it does not, and agrees that it will not, discriminate in any manner on the basis of race, color, religious creed, ancestry, national origin, age, sex, marital status, disability, or sexual orientation.

The contractor must bind its subcontractors to the provisions of this section.

TABLE A. - INSURANCE REQUIREMENTS

(See Paragraph #21 Under the General Conditions of Contract Between County and Contractor)

	<u>CONTRACT DOLLAR VALUES (IN \$1,000's)</u>			
	<u>Up to 50</u>	<u>Up to 100</u>	<u>Up to 1,000</u>	<u>Over 1,000</u>
Workers Compensation (for contractors with employees)				
Bodily Injury by				
Accident (each)	100	100	100	See
Disease (policy limits)	500	500	500	Attachment
Disease (each employee)	100	100	100	
Commercial General Liability minimum combined single limit for bodily injury and property damage per occurrence, including contractual liability, premises and operations, and independent contractors	300	500	1,000	See Attachment
Minimum Automobile Liability (including owned, hired and non-owned automobiles)				
Bodily Injury				
each person	100	250	500	See
each occurrence	300	500	1,000	Attachment
Property Damage each occurrence	300	300	300	
Professional Liability* for errors, omissions and negligent acts, per claim and aggregate, with one year discovery period and maximum deductible of \$25,000	250	500	1,000	See Attachment

Certificate Holder
Montgomery County Maryland (Contract #)
Office of Procurement
Rockville Center
255 Rockville Pike, Suite 180
Rockville, Maryland 20850-4166

*Professional services contracts only

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TABLE B. – INSURANCE REQUIREMENTS
(See Paragraph #21 Under the General Conditions of Contract Between County and Contractor)

	<u>Up to 50</u>	<u>Up to 100</u>	<u>Up to 1,000</u>	<u>Over 1,000</u>
Commercial General Liability minimum combined single limit for bodily injury and property damage per occurrence, including contractual liability, premises and operations, independent contractors, and product liability	300	500	1,000	See Attachment

Certificate Holder
Montgomery County Maryland (Contract #)
Office of Procurement
Rockville Center
255 Rockville Pike, Suite 180
Rockville, Maryland 20850-4166

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25. PAYMENTS

No payment by the County may be made, or is due, under this contract, unless funds for the payment have been appropriated and encumbered by the County. Under no circumstances will the County pay the contractor for legal fees. The contractor must not proceed to perform any work (provide goods, services, or construction) prior to receiving written confirmation that the County has appropriated and encumbered funds for that work. If the contractor fails to obtain this verification from the Office of Procurement prior to performing work, the County has no obligation to pay the contractor for the work.

If this contract provides for an additional contract term for contractor performance beyond its initial term, continuation of contractor's performance under this contract beyond the initial term is contingent upon, and subject to, the appropriation of funds and encumbrance of those appropriated funds for payments under this contract. If funds are not appropriated and encumbered to support continued contractor performance in a subsequent fiscal period, contractor's performance must end without further notice from, or cost to, the County. The contractor acknowledges that the County Executive has no obligation to recommend, and the County Council has no obligation to appropriate, funds for this contract in subsequent fiscal years. Furthermore, the County has no obligation to encumber funds to this contract in subsequent fiscal years, even if appropriated funds may be available. Accordingly, for each subsequent contract term, the contractor must not undertake any performance under this contract until the contractor receives a purchase order or contract amendment from the County that authorizes the contractor to perform work for the next contract term.

26. PERSONAL PROPERTY

All furniture, office equipment, equipment, vehicles, and other similar types of personal property specified in the contract, and purchased with funds provided under the contract, become the property of the County upon the end of the contract term, or upon termination or expiration of this contract, unless expressly stated otherwise.

27. TERMINATION FOR DEFAULT

The Director, Office of Procurement, may terminate the contract in whole or in part, and from time to time, whenever the Director, Office of Procurement, determines that the contractor is:

- (a) defaulting in performance or is not complying with any provision of this contract;
- (b) failing to make satisfactory progress in the prosecution of the contract; or
- (c) endangering the performance of this contract.

The Director, Office of Procurement, will provide the contractor with a written notice to cure the default. The termination for default is effective on the date specified in the County's written notice. However, if the County determines that default contributes to the curtailment of an essential service or poses an immediate threat to life, health, or property, the County may terminate the contract immediately upon issuing oral or written notice to the contractor without any prior notice or opportunity to cure. In addition to any other remedies provided by law or the contract, the contractor must compensate the County for additional costs that foreseeably would be incurred by the County, whether the costs are actually incurred or not, to obtain substitute performance. A termination for default is a termination for convenience if the termination for default is later found to be without justification.

28. TERMINATION FOR CONVENIENCE

This contract may be terminated by the County, in whole or in part, upon written notice to the contractor, when the County determines this to be in its best interest. The termination for convenience is effective on the date specified in the County's written notice. Termination for convenience may entitle the contractor to payment for reasonable costs allocable to the contract for work or costs incurred by the contractor up to the date of termination. The contractor must not be paid compensation as a result of a termination for convenience that exceeds the amount encumbered to pay for work to be performed under the contract.

29. TIME

Time is of the essence.

30. WORK UNDER THE CONTRACT

Work may not commence under this contract until all conditions for commencement are met, including execution of the contract by both parties, compliance with insurance requirements, encumbrance of funds, and issuance of any required notice to proceed.

THIS FORM MAY NOT BE MODIFIED WITHOUT THE PRIOR APPROVAL OF THE OFFICE OF THE COUNTY ATTORNEY. PMMD-45. REVISED 01/06/05

ATTACHMENT D
Minority-Owned Business Addendum to General Conditions of Contract Between
County and Contractor

- A. This contract is subject to the Montgomery County Code and the Montgomery County Procurement Regulations regarding participation in the Minority-Female-Disabled Person (MFD) procurement program.
- B. Contractor must subcontract a percentage of the total dollar value of the contract, including all modifications and renewals, to certified minority owned businesses. The MFD subcontracting goal may be waived under appropriate circumstances by submission of a letter to the Minority Procurement Officer. The letter must explain why a waiver is appropriate. The Director of Procurement or designee may waive, in whole or in part, the MFD subcontracting goal if the Director determines that a waiver is appropriate under Section 7.3.3.5 of the Montgomery County Procurement Regulations. In determining if a waiver should be granted, the Director may require the Contractor to submit additional information; the Director may require the Contractor to submit some or all of this information on forms approved by the Director.
- C. The attached MFD Subcontractor Performance Plan, which must be approved by the Director, is an integral part of the contract between County and Contractor. In a multi-term contract, Contractor must submit a MFD Subcontract Performance Plan to be in effect for the life of the contract, including any renewal or modification.
- D. Contractor must include in each subcontract with a minority owned business a provision that requires the use of binding arbitration with a neutral arbitrator to resolve disputes between the Contractor and the minority owned business subcontractor. This arbitration provision must describe how the cost of dispute resolution will be apportioned; the apportionment must not, in the judgment of the Director, attempt to penalize a minority owned business subcontractor for filing an arbitration claim.
- E. County approval of the MFD Subcontractor Performance Plan does not create a contractual relationship between the County and the minority owned business subcontractor.
- F. Contractor must notify and obtain prior written approval from the Director regarding any change in the MFD Subcontractor Performance Plan.
- G. Before receiving final payment under this contract, Contractor must submit documentation showing compliance with the MFD Subcontracting Performance Plan. Documentation may include, at the direction of the Director, invoices, copies of subcontracts with minority owned businesses, cancelled checks, affidavits executed by minority owned business subcontractors, waivers, and arbitration decisions. The Director may require Contractor to submit periodic reports on a form approved by the Director. The Director may conduct an on-site inspection for the purpose of determining compliance with the MFD Subcontractor Performance Plan. If this is a multi-term contract, final payment means the final payment due for performance rendered for each term of the contract.
- H. If the Contractor fails to submit documentation demonstrating compliance with the MFD Subcontractor Performance Plan, to the satisfaction of the Director, after considering relevant waivers and arbitration decisions, the Contractor is in breach of this contract. In the event of a breach of contract under this addendum, the Contractor must pay to the County liquidated damages equal to the difference between all amounts the Contractor has agreed under its Plan to pay minority owned business subcontractors and all amounts actually paid minority owned business subcontractors with appropriate credit given for any relevant waiver or arbitration decision. Contractor and County acknowledge that damages which would result to the County as a result of a breach under this addendum are difficult to ascertain, and that the liquidated damages provided for in this addendum are fair and reasonable in estimating the damage to the County of a breach of this addendum by Contractor. In addition, the County may terminate the contract. As the result of a breach under this addendum, The Director, Office of Procurement must find the Contractor non-responsible for purposes of future procurement with the County for the ensuing three years.

**MINORITY, FEMALE, DISABLED PERSON SUBCONTRACTOR
PERFORMANCE PLAN**

Contractor's Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Phone Number: _____ Fax Number: _____ E-mail: _____

CONTRACT NUMBER/PROJECT DESCRIPTION: _____

A. Individual designated by Contractor to monitor Contractor's compliance with MFD Subcontractor Performance Plan:

Name: _____

Title: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Phone Number: _____ Fax Number: _____ E-mail: _____

B. This Plan covers life of the contract from contract execution through final contract expiration date.

C. The percentage of total contract dollars, including modifications and renewals, to be paid to all certified minority owned business subcontractors, is _____% of the total dollars awarded to Contractor.

D. Each of the following certified minority owned businesses will be paid the percentage of total contract dollars indicated below as a subcontractor under the contract.

All listed MFD subcontractors are required to be Maryland Department of Transportation (MDOT) certified. For assistance, please call (240) 777-9912.

I hereby certify that the business(s) listed below are Maryland Department of Transportation (MDOT) certified.

1. Certified Minority Owned Business Subcontractor Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Phone Number: _____ Fax Number: _____ E-mail: _____

CONTACT PERSON: _____

MDOT Certification Number: _____

Attach your MDOT certification letter.

Circle MFD Type:

AFRICAN AMERICAN

ASIAN AMERICAN

DISABLED PERSON

FEMALE

HISPANIC AMERICAN

NATIVE AMERICAN

The percentage of total contract dollars to be paid to this subcontractor is _____

This subcontractor will provide the following goods and/or services: _____

2. Certified Minority Owned Business Subcontractor Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Phone Number: _____ Fax Number: _____ E-mail: _____

CONTACT PERSON: _____

MDOT Certification Number: _____

Attach your MDOT certification letter.

Circle MFD Type:

AFRICAN AMERICAN

ASIAN AMERICAN

DISABLED PERSON

FEMALE

HISPANIC AMERICAN

NATIVE AMERICAN

The percentage of total contract dollars to be paid to this subcontractor is _____

This subcontractor will provide the following goods and/or services: _____

3. Certified Minority Owned

Business Subcontractor Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Phone Number: _____ Fax Number: _____ E-mail: _____

CONTACT PERSON: _____

MDOT Certification Number: _____

Attach your MDOT certification letter.

Circle MFD Type:

AFRICAN AMERICAN

ASIAN AMERICAN

DISABLED PERSON

FEMALE

HISPANIC AMERICAN

NATIVE AMERICAN

The percentage of total contract dollars to be paid to this subcontractor is _____

This subcontractor will provide the following goods and/or services: _____

4. Certified Minority Owned Business Subcontractor Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Phone Number: _____ Fax Number: _____ E-mail: _____

CONTACT PERSON: _____

MDOT Certification Number: _____

Attach your MDOT certification letter.

Circle MFD Type:

AFRICAN AMERICAN

ASIAN AMERICAN

DISABLED PERSON

FEMALE

HISPANIC AMERICAN

NATIVE AMERICAN

The percentage of total contract dollars to be paid to this subcontractor is _____

This subcontractor will provide the following goods and/or services: _____

E. The following language will be inserted in each subcontract with a certified minority owned business listed in D above, regarding the use of binding arbitration with a neutral arbitrator to resolve disputes with the minority owned business subcontractor; the language must describe how the costs of dispute resolution will be apportioned:

F. Contractor applies for the following full or partial waiver; specify the basis for the waiver request:

Full Waiver Approved:

Minority Procurement Officer

Date _____

Partial Waiver Approved:

Minority Procurement Officer

Date _____

Full Waiver Approved:

Director, Office of Procurement

Date _____

Partial Waiver Approved:

Director, Office of Procurement

Date _____

Contractor submits this MFD Subcontractor Performance Plan (Plan Modification No. _____) in accordance with the Minority Owned Business Addendum to General Conditions of Contract between County and Contractor.

CONTRACTOR SIGNATURE

USE ONE:

1. TYPE CONTRACTOR'S NAME: _____

Signature

Typed Name

Date

2. TYPE CORPORATE CONTRACTOR'S NAME: _____

Signature

Typed Name

Title

Date

I hereby affirm that the above named person is a corporate officer or a designee empowered to sign contractual agreements for the corporation.

Signature

Typed Name

Title

Date

APPROVED:

Director, Office of Procurement

Date

7.3.3.4(a) of the Procurement Regulations requires:

The contract between the Contractor and the County requires the Contractor to notify the Director of Procurement of any proposed change to the Subcontractor Performance Plan.

ATTACHMENT E

Wage Requirements for Services Contract Addendum to the General Conditions of Contract Between County and Contractor

- A. This contract is subject to the wage requirements of Section 11B-33A of the Montgomery County Code. A County contract for the procurement of services must require the contractor and any of its subcontractors to comply with the wage requirements of this Section, subject to exceptions from coverage for particular contractors noted in 11B-33A(b) and for particular employees noted in 11B-33A(f).
- B. Conflicting requirements (11B-33A(g)): If any federal, state, or County law or regulation requires payment of a higher wage, that law or regulation controls. If any applicable collective bargaining agreement requires payment of a higher wage, that agreement controls.
- C. Nonprofit organizations who are exempt from the wage requirements under 11B-33A must specify the wage the organization intends to pay to those employees who will perform direct, measurable work under the contract, and any health insurance the organization intends to provide to those employees.
- D. A contractor must not split or subdivide a contract, pay an employee through a third party, or treat an employee as a subcontractor or independent contractor, to avoid the imposition of any requirements in 11B-33A.
- E. Each contractor and subcontractor covered under 11B-33A must: certify that it is aware of and will comply with the applicable wage requirements; keep and submit any verifiable records necessary to show compliance; and conspicuously post notices informing employees of the wage requirements, and send a copy of each such notice to the County's Director of Procurement.
- F. An employer must comply with Section 11B-33A during the initial term of the contract and all subsequent renewal periods and must pay an increase adjustment in this wage rate, if any, automatically effective July 1 of each year. The County will adjust the wage rate by the annual average increase in the Consumer Price Index for all urban consumers for the Washington-Baltimore metropolitan area, or successor index, for the previous calendar year and must calculate the adjustment to the nearest multiple of 5 cents.
- G. An employer must not discharge or otherwise retaliate against an employee for asserting any right or filing a complaint of a violation, under the wage requirements.
- H. The sanctions under Section 11B-33(b), that apply to noncompliance with nondiscrimination requirements, apply with equal force and scope to noncompliance with the wage requirements under 11B-33A.
- I. The County may assess liquidated damages for any noncompliance by contractor with the Section 11B-33A wage requirements at the rate of 1% per day of the total contract amount, or for a requirements contract, the estimated annual contract value, for each day of the violation. This liquidated damages amount includes the amount of any unpaid wages, with interest. In the event of a breach of contract under this paragraph, the Contractor must pay to the County liquidated damages noted above, in addition to any other remedies available to the County. Contractor and County acknowledge that damages that would result to the County as a result of a breach under this paragraph are difficult to ascertain, and that the liquidated damages provided for in this paragraph are fair and reasonable in estimating the damage to the County resulting from a breach of this paragraph by Contractor. In addition, the contractor is jointly and severally liable for any noncompliance by a subcontractor. Furthermore, Contractor agrees that an aggrieved employee, as a third-party beneficiary, may by civil action enforce the payment of wages due under the Section 11B-33A wage requirements and recover from Contractor any unpaid wages with interest, a reasonable attorney's fee, and damages for any retaliation for asserting any right or claim under the 11B-33A wage requirements.
- J. The Director may conduct random audits to assure compliance with Section 11B-33A. The Director may conduct an on-site inspection(s) for the purpose of determining compliance.
- A. If the Contractor fails, upon request by the Director, to submit documentation demonstrating compliance with Section 11B-33A to the satisfaction of the Director, the Contractor is in breach of this contract. In the event of a breach of contract under this paragraph, the Contractor must pay to the County liquidated damages noted in paragraph I. above, in addition to any other remedies available to the County. Contractor and County acknowledge that damages that would result to the County as a result of a breach under this paragraph are difficult to ascertain, and that the liquidated damages provided for in this paragraph are fair and reasonable in estimating the damage to the County resulting from a breach of this paragraph by Contractor.

Wage Requirements Certification (Montgomery County Code, Section 11B-33A)

Business Name					
Address					
City		State		Zip Code	
Phone Number		Fax Number		E-Mail	

Please provide in the spaces below the contact name and information of the individual designated by your firm to monitor your compliance with the County's wage requirements, unless exempt under Section 11B-33A(b) (see item B below):

Contact Name			Title		
Phone Number		Fax Number		E-Mail	

MUST CHECK ☒ ☒ ALL APPROPRIATE BOXES BELOW that apply in the event that you, as an "Offeror," are awarded the contract and become a "Contractor":

Wage Requirements Compliance

A. ☐ This Contractor as a "covered employer" will comply with the requirements under Section 11B-33A, Wage Requirements. Contractor will pay all employees not exempt under the wage requirements, and who perform direct measurable work for the County, the wage requirements effective at the time the work is performed. The proposal price(s) submitted under this solicitation include(s) sufficient funds to meet the wage requirements.

Exemption Status (if applicable)

B. This Contractor is exempt from 11B-33A, "Wage Requirements," because it is:

- ☐ 1. a contractor who employs fewer than 10 employees when the contractor submits a bid or proposal, and will continue to be exempt as long as contractor does not employ 10 or more employees at any time the contract is in effect as a result of performing the contract. Section 11B-33A(b)(1).
- ☐ 2. a contractor who, at the time a contract is signed: has received less than \$50,000 from the County in the most recent 12-month period; and will be entitled to receive less than \$50,000 from the County under that contract in the next 12-month period. Section 11B-33A(b)(2).
- ☐ 3. a public entity. Section 11B-33A(b)(3).
- ☐ 4. a nonprofit organization that has qualified for an exemption from federal income taxes under Section 501(c)(3) of the Internal Revenue Code. Section 11B-33A(b)(4) (**must complete item C below**).
- ☐ 5. an employer to the extent that the employer is expressly precluded from complying with this Section by the terms of any federal or state law, contract, or grant. Section 11B-33A(b)(8) (**must specify the law, or furnish a copy of the contract or grant**).

Nonprofit Wage & Health Information (Must complete and submit wage and health insurance form)

C. ☐ This Contractor is a Nonprofit organization that is exempt from coverage under Section 11B-33A(b)(4). Accordingly, the contractor has completed the 501(c)(3) Nonprofit Organization's Employee's Wage and Health Insurance Form, that is attached. See Section 11B-33A(c)(2).

Nonprofit's Comparison Price(s)

D. ☐ This Contractor is a Nonprofit organization that is opting to pay its covered employees the hourly rate specified in the wage requirements. Accordingly, Contractor is duplicating the form on which it states its cost proposal or cost format that is contained in the RFP, and is submitting on this duplicate form its cost(s) to the County had it not opted to pay its employees the hourly rate specified in the wage requirements. For proposal evaluation purposes, this cost(s) will be compared to the cost(s) of another Nonprofit organization(s) that is paying its employees an amount consistent with its exemption from paying the hourly rate under the wage requirements. This revised information on the duplicate cost proposal or cost format form must be clearly marked as your Nonprofit organization comparison cost(s). In order to compare your cost(s), the revised information on the duplicate cost proposal or cost format form: must be submitted with your proposal, must show how the difference between your cost and your Nonprofit organization comparison cost(s) was calculated, and will not be accepted after the proposal closing date. See Section 11B-33A(c)(2).

Wage Requirements Reduction

- E. ☐ This Contractor is a “covered employer,” and it desires to reduce its hourly rate paid under the wage requirements by an amount equal to, or less than, the per employee hourly cost of the employer’s share of the health insurance premium. Contractor certifies that the per employee hourly cost of the employer’s share of the premium for that insurance is: \$_____. See Section 11B-33A(d).

Contractor Certification

CONTRACTOR SIGNATURE: Contractor submits this certification form in accordance with Section 11B-33A of the Montgomery County Code. Contractor certifies that it, and any and all of its subcontractors that perform services under the resultant contract with the County, adheres to Section 11B-33A of the Montgomery County Code.

Authorized Corporate, Partner, or Proprietor Signature		Typed Name of Signature	
Title of Authorized Person		Date	

501(c)(3) Nonprofit Organization's Employee's Wage and Health Insurance Form

Business Name					
Address					
City		State		Zip Code	
Phone Number		Fax Number		E-Mail	

Please provide below the employee labor category of all employee(s) who will perform direct measurable work under this contract, the hourly wage the organization pays for that employee labor category, and any health insurance the organization intends to provide for that employee labor category:

[illegible]

* IF NO HEALTH INSURANCE PLAN IS PROVIDED PLEASE STATE "NONE".